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19 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

SC

22 CALIFORNIA SPORTFISHING  
23 PROTECTION ALLIANCE, a non-profit  
24 corporation,

25 Plaintiff,

26 vs.

27 WASTE MANAGEMENT OF  
28 ALAMEDA COUNTY, INC., a  
corporation.

Defendant.

Case No. 08-03497

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its  
counsel, hereby alleges:

**I. INTRODUCTION**

1. This complaint seeks relief for Defendant's discharges of polluted storm water  
and non-storm water pollutants from Defendant's facility ("the Facility") into the waters of  
the United States in violation of the Act and the State of California's "Waste Discharge

Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities,” State Water Resources Control Board (“State Board”) Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (“NPDES”) Permit No. CAS000001, (hereinafter “the Order” or “Permit”). Defendant’s violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

2. The failure on the part of persons and facilities such as Defendant and its industrial facility to comply with storm water requirements is recognized as a significant cause of the continuing decline in water quality of the San Francisco Bay (“Bay”) and other area receiving waters. The general consensus among regulatory agencies and water quality specialists is that storm pollution amounts to a substantial portion of the total pollution entering the aquatic environment each year. With every rainfall event, millions of gallons of polluted rainwater originating from industries within the surrounding area pour into the Bay.

3. The continuing decline in water quality in the San Francisco Bay is a matter of serious public concern. Data gathered by CalFed, a coalition of fifteen state and federal agencies analyzing water allocation issues, has confirmed that the Bay is a heavily polluted water body. The entire Bay and all of its major tributaries have been identified by the State Board, the Regional Board, and EPA as impaired water bodies under Section 303(d) of the Clean Water Act. 33 U.S.C. § 1313(d).

## **II. JURISDICTION AND VENUE**

4. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of

actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

5. On or about April 21, 2008, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant, to the Defendant; the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); and to the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). A true and correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated by reference.

6. More than sixty days have passed since notice was served on Defendant and the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action's claim for civil penalties is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

7. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in Oakland, California because the sources of the violations are located within Alameda County, California.

### **III. PARTIES**

8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and work in and around waters of the State of California, including the San Francisco Bay. CSPA is dedicated to the preservation, protection, and defense of the environment, the wildlife and the natural resources of all waters of California. To further these goals, CSPA actively seeks federal and state agency implementation of the

1 Act and other laws and, where necessary, directly initiates enforcement actions on behalf of  
2 itself and its members.

3 9. Members of CSPA reside in and around the Bay and enjoy using the Bay for  
4 recreation and other activities. Members of CSPA use and enjoy the waters into which  
5 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged.  
6 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife  
7 and engage in scientific study including monitoring activities, among other things.  
8 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to  
9 such threats and impairments. Thus, the interests of CSPA's members have been, are being,  
10 and will continue to be adversely affected by Defendant's failure to comply with the Clean  
11 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused  
12 by Defendant's activities.

13 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
14 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. (hereinafter "Defendant" or  
15 "Waste Management") is a corporation organized under the laws of California. Defendant  
16 Waste Management operates the Davis Street Transfer Station, a transfer station for  
17 municipal and solid waste, in San Leandro, California.

#### 18 **IV. STATUTORY BACKGROUND**

19 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
20 pollutant into waters of the United States, unless such discharge is in compliance with  
21 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
22 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
23 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

24 12. Section 402(p) of the Act establishes a framework for regulating municipal and  
25 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States  
26 with approved NPDES permit programs are authorized by Section 402(p) to regulate  
27 industrial storm water discharges through individual permits issued to dischargers or through  
28 the issuance of a single, statewide general permit applicable to all industrial storm water

1 dischargers. 33 U.S.C. § 1342(p).

2 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
3 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
4 NPDES permits in California.

5 14. The State Board elected to issue a statewide general permit for industrial storm  
6 water discharges. The State Board issued the General Permit on or about November 19,  
7 1991, modified the General Permit on or about September 17, 1992, and reissued the  
8 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water  
9 Act, 33 U.S.C. § 1342(p).

10 15. In order to discharge storm water lawfully in California, industrial dischargers  
11 must comply with the terms of the General Permit or have obtained and complied with an  
12 individual NPDES permit. 33 U.S.C. § 1311(a).

13 16. The General Permit contains several prohibitions. Effluent Limitation B(3) of  
14 the General Permit requires dischargers to reduce or prevent pollutants in their storm water  
15 discharges through implementation of the Best Available Technology Economically  
16 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional  
17 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include  
18 both nonstructural and structural measures. General Permit, Section A(8). Discharge  
19 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-  
20 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.  
21 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to  
22 any surface or ground water that adversely impact human health or the environment.  
23 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that  
24 cause or contribute to an exceedance of any applicable water quality standards contained in a  
25 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

26 17. EPA has established Parameter Benchmark Values as guidelines for  
27 determining whether a facility discharging industrial storm water has implemented the  
28 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established

1 Parameter Benchmark Values for the following parameters, among others: total suspended  
2 solids – 100 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; zinc –  
3 0.117 mg/L; lead – 0.0816 mg/L; oil & grease – 15 mg/L; chemical oxygen demand – 120  
4 mg/L. The California State Water Resources Control Board has proposed a Benchmark  
5 Value for electrical conductance of 200  $\mu$ mhos/cm.

6 18. In addition to absolute prohibitions, the General Permit contains a variety of  
7 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
8 or having the potential to discharge, storm water associated with industrial activity that have  
9 not obtained an individual NPDES permit must apply for coverage under the State's General  
10 Permit by filing a Notice of Intent To Comply ("NOI"). The General Permit requires  
11 existing dischargers to have filed their NOIs before March 30, 1992.

12 19. Dischargers must develop and implement a Storm Water Pollution Prevention  
13 Plan ("SWPPP"). The SWPPP must describe storm water control equipment and measures  
14 that comply with the BAT and BCT standards. The General Permit requires that an initial  
15 SWPPP has been developed and implemented before October 1, 1992. The SWPPP must,  
16 among other requirements, identify and evaluate sources of pollutants associated with  
17 industrial activities that may affect the quality of storm and non-storm water discharges from  
18 the facility and identify and implement site-specific best management practices ("BMPs") to  
19 reduce or prevent pollutants associated with industrial activities in storm water and  
20 authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must  
21 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of  
22 individuals and their responsibilities for developing and implementing the SWPPP (Section  
23 A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow  
24 pattern and nearby water bodies, the location of the storm water collection, conveyance and  
25 discharge system, structural control measures, impervious areas, areas of actual and potential  
26 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials  
27 handled and stored at the site (Section A(5)); a description of potential pollutant sources  
28 including industrial processes, material handling and storage areas, dust and particulate

1 generating activities, and a description of significant spills and leaks, a list of all non-storm  
2 water discharges and their sources, and a description of locations where soil erosion may  
3 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources  
4 at the Facility and a description of the BMPs to be implemented at the Facility that will  
5 reduce or prevent pollutants in storm water discharges and authorized non-storm water  
6 discharges, including structural BMPs where non-structural BMPs are not effective (Section  
7 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where  
8 necessary (Section A(9),(10)).

9         20. Section C(11)(d) of the General Permit's Standard Provisions requires  
10 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).  
11 Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water  
12 controls including the preparation of an evaluation report and implementation of any  
13 additional measures in the SWPPP to respond to the monitoring results and other inspection  
14 activities.

15         21. The General Permit requires dischargers commencing industrial activities  
16 before October 1, 1992 to develop and implement an adequate written monitoring and  
17 reporting program no later than October 1, 1992. Existing facilities covered under the  
18 General Permit had to implement all necessary revisions to their monitoring programs no  
19 later than August 1, 1997.

20         22. As part of their monitoring program, dischargers must identify all storm water  
21 discharge locations that produce a significant storm water discharge, evaluate the  
22 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
23 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
24 conduct visual observations of these discharge locations for at least one storm per month  
25 during the wet season (October through May) and record their findings in their Annual  
26 Report. Dischargers must also collect and analyze storm water samples from at least two  
27 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall  
28 collect storm water samples during the first hour of discharge from (1) the first storm event



of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i)-(iii) requires dischargers to sample and analyze during the wet season for basic parameters, such as pH, total suspended solids (“TSS”), electrical conductance, and total organic content (“TOC”) or oil and grease (“O&G”), certain industry-specific parameters, and toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution.

23. Section B(14) of the General Permit requires dischargers to submit an annual report by July 1 of each year to the executive officer of the relevant Regional Board. The annual report must be signed and certified by an appropriate corporate officer. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9) and (10) and B(14).

24. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$27,500 per day (violations from January 30, 1997 through March 15, 2004) and \$32,500 per day (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

25. The Regional Board has established water quality standards for the San Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally referred to as the Basin Plan.

26. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.”

27. The Basin Plan provides that “[w]aters shall not contain suspended material in



1 concentrations that cause nuisance or adversely affect beneficial uses” and that “[w]aters  
2 shall not contain biostimulatory substances in concentrations that promote aquatic growths to  
3 the extent that such growths cause nuisance or adversely affect beneficial uses.”

4 28. The Basin Plan limits floating material, stating that “[w]aters shall not contain  
5 floating material, including solids, liquids, foams, and scum, in concentrations that cause  
6 nuisance or adversely affect beneficial uses.”

7 29. The Basin provide provides that “[t]he suspended sediment load and suspended  
8 sediment discharge rate of surface waters shall not be altered in such a manner as to cause  
9 nuisance or adversely affect beneficial uses.”

10 30. The Basin Plan dictates that “[w]aters shall be free of changes in turbidity that  
11 cause nuisance or adversely affect beneficial uses.”

12 31. The Basin Plan provides that “[w]aters shall not contain oils, greases, waxes,  
13 or other materials in concentrations that result in a visible film or coating on the surface of  
14 the water or on objects in the water, that cause nuisance, or that otherwise adversely affect  
15 beneficial uses.”

16 32. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor  
17 raised above 8.5.”

18 33. The Basin Plan establishes a dissolved oxygen standard of 5.0 mg/L for tidal  
19 waters of San Francisco Bay downstream from the Carquinez Bridge.

20 34. The Basin Plan establishes Marine Water Quality Objectives for the following  
21 pollutants: zinc – 0.081 mg/L (4-day average), 0.090 mg/L (1-hour average); lead – 0.0081  
22 mg/L (4-day average), 0.22 mg/L (1-hour average); and copper 0.0031 mg/L (4-day  
23 average), 0.0048 mg/L (1-hour average).

## 24 **V. STATEMENT OF FACTS**

25 35. Defendant Waste Management operates, the Davis Street Transfer Station, a  
26 transfer station for commercial and municipal solid waste at 2615 Davis Street in San  
27 Leandro, California. The Facility is engaged in the transfer of solid waste for disposal as  
28 well as recycling operations. The Facility falls within the Standard Industrial Classification

1 (“SIC”) Code 5093. The Facility covers about 53 acres, the majority of which is paved and  
2 used for transporting and storing waste materials throughout the Facility. On information  
3 and belief, Plaintiff alleges that there are at least seven buildings located on the property. On  
4 information and belief, Plaintiff alleges that materials transfer is conducted both inside and  
5 outside of these buildings.

6 36. Defendant channels and collects storm water falling on the Facility through five  
7 storm water outfalls. Each storm drain collects storm water runoff from a particular area of  
8 the Facility. These outfalls discharge the storm water directly to the San Francisco Bay, or  
9 to a municipal storm drain that flows to the San Francisco Bay.

10 37. The industrial activities at the site include the transfer of solid waste from  
11 collection vehicles to transport vehicles which move the waste to a remote landfill for  
12 disposal, as well as recycling operations for materials such as paper, plastic, glass,  
13 wood/yard waste, scrap metal, tires, construction debris, etc. It also includes the storage and  
14 maintenance of trucks, tractors, and other machinery used to transfer and dispose of these  
15 materials.

16 38. Significant activities at the site take place outside and are exposed to rainfall.  
17 These activities include transfer, storage, and disposal of the numerous types of materials  
18 handled by the Facility; the storage and use of vehicles and equipment for materials  
19 handling; and the storage, handling, and disposal of waste materials. Loading and delivery  
20 of materials occurs outside. Trucks enter and exit the Facility directly from and to a public  
21 road. Trucks, tractors, and other machinery are the primary means of moving materials  
22 around the Facility. The Facility’s exposed areas contain large piles of a variety of materials.  
23 Plaintiff alleges on information and belief that many of the exposed surfaces at the Facility  
24 are unpaved and sediment and other materials are disturbed as a result of the storage and  
25 disposal processes. These areas are exposed to storm water and storm flows due to the lack  
26 of overhead coverage, berms, and other storm water controls.

27 39. Industrial machinery, heavy equipment and vehicles, including trucks and  
28 tractors are operated and stored at the Facility in areas exposed to storm water flows.

1 Plaintiff is informed and believes, and thereupon alleges, that such machinery and equipment  
2 leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are  
3 exposed to storm water flows, and that such machinery and equipment track sediment and  
4 other contaminants throughout the Facility.

5 40. Plaintiff is informed and believes, and thereupon alleges that the storm water  
6 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,  
7 and other pollutants as it flows toward the storm water drains. Storm water and any  
8 pollutants contained in that storm water entering the drains flow directly to the San Francisco  
9 Bay.

10 41. The management practices at the Facility are wholly inadequate to prevent the  
11 sources of contamination described above from causing the discharge of pollutants to waters  
12 of the United States. The Facility lacks sufficient structural controls such as grading,  
13 berming, roofing, containment, or drainage structures to prevent rainfall and storm water  
14 flows from coming into contact with these and other exposed sources of contaminants. The  
15 Facility lacks sufficient structural controls to prevent the discharge of water once  
16 contaminated. The Facility lacks adequate storm water pollution treatment technologies to  
17 treat storm water once contaminated.

18 42. Since at least February 2, 2004, Defendant has taken samples or arranged for  
19 samples to be taken of storm water discharges at the Facility. The sample results were  
20 reported in the Facility's annual reports submitted to the Regional Board. Defendant Waste  
21 Management certified each of those annual reports pursuant to Sections A and C of the  
22 General Permit.

23 43. Since at least February 2, 2004, the Facility has detected total suspended  
24 solids, chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead, and  
25 electrical conductance in storm water discharged from the Facility. Levels of these  
26 pollutants detected in the Facility's storm water have been in excess of EPA's numeric  
27 parameter benchmark values. Levels of these pollutants detected in the Facility's storm  
28 water have been in excess of water quality standards established in the Basin Plan.

1           44.     The levels of total suspended solids in storm water detected by the Facility  
2 have exceeded the benchmark value for total suspended solids of 100 mg/L established by  
3 EPA. For example, on May 19, 2006, the level of suspended solids measured by Defendant  
4 in the Facility's discharged storm water was 1,800 mg/L. That level of total suspended  
5 solids is 18 times the benchmark value for suspended solids established by EPA.

6           45.     The levels of chemical oxygen demand in storm water detected by the Facility  
7 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established  
8 by EPA. For example, on May 19, 2006, the level of chemical oxygen demand measured by  
9 Defendant in the Facility's discharged storm water was 630 mg/L. That level of chemical  
10 oxygen demand is over five times the benchmark value for chemical oxygen demand  
11 established by EPA.

12           46.     The levels of oil & grease in storm water detected by the Facility have  
13 exceeded the benchmark value for oil & grease of 15 mg/L established by EPA. For  
14 example, on November 4, 2005, the level of oil & grease measured by Defendant in the  
15 Facility's discharged storm water was 52 mg/L. That level of oil & grease is nearly three  
16 and a half times the benchmark value for oil & grease established by EPA.

17           47.     The levels of aluminum in storm water detected by the Facility have exceeded  
18 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on May  
19 19, 2006, the level of aluminum measured by Defendant in the Facility's discharged storm  
20 water was 220 mg/L. That level of aluminum is over 293 times the benchmark value for  
21 aluminum established by EPA.

22           48.     The levels of copper in storm water detected by the Facility have exceeded the  
23 benchmark value for copper of 0.0636 mg/L established by EPA. For example, on May 19,  
24 2006, the level of copper measured by Defendant in the Facility's discharged storm water  
25 was 1.8 mg/L. That level of copper is over 28 times the benchmark value for copper  
26 established by EPA.

27           49.     The levels of iron in storm water detected by the Facility have exceeded the  
28 benchmark value for iron of 1.0 mg/L established by EPA. For example, on May 19, 2006,

1 the level of iron measured by Defendant in the Facility's discharged storm water was 310  
2 mg/L. That level of iron is 310 times the benchmark value for iron established by EPA.

3 50. The levels of zinc in storm water detected by the Facility have exceeded the  
4 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on May 19,  
5 2006, the level of zinc measured by Defendant in the Facility's discharged storm water was  
6 11 mg/L. That level of zinc is over 94 times the benchmark value for zinc established by  
7 EPA.

8 51. The levels of lead in storm water detected by the Facility have exceeded the  
9 benchmark value for lead of 0.0816 mg/L established by EPA. For example, on May 19,  
10 2006, the level of lead measured by Defendant in the Facility's discharged storm water was  
11 3.4 mg/L. That level of lead is nearly 42 times the benchmark value for lead established by  
12 EPA.

13 52. The electrical conductance levels detected by the Facility in its storm water  
14 have been greater than the numeric water quality standards applicable to electrical  
15 conductance in California. The electrical conductance levels detected by the Facility in its  
16 storm water have been greater than the benchmark value of 200  $\mu\text{mho}/\text{cm}$  proposed by the  
17 State Board. For example, on May 19, 2006, the electrical conductance level measured by  
18 Defendant in the Facility's discharged storm water was 1500  $\mu\text{mho}/\text{cm}$ . That electrical  
19 conductance level is over seven times the State Board's proposed benchmark value.

20 53. On information and belief, Plaintiff alleges that Defendants have failed to  
21 sample or monitor any storm water discharge locations during the 2004-2005 and 2006-2007  
22 rainy seasons in violation of Sections B(4) and B(5) of the General Permit.

23 54. On information and belief, Plaintiff alleges that since at least February 2, 2004,  
24 Defendant has failed to implement BAT and BCT at the Facility for its discharges of total  
25 suspended solids, chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead,  
26 and electrical conductance. Section B(3) of the General Permit requires that Defendant  
27 implement BAT for toxic and nonconventional pollutants and BCT for conventional  
28 pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has

1 failed to implement BAT and BCT.

2 55. On information and belief, Plaintiff alleges that since at least October 1, 1992,  
3 Defendant has failed to implement an adequate SWPPP for the Facility. Plaintiff is informed  
4 and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not set  
5 forth site-specific best management practices for the Facility that are consistent with BAT or  
6 BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the  
7 SWPPP prepared for the Facility does not include an assessment of potential pollutant  
8 sources, structural pollutant control measures employed by the Defendant, a list of actual and  
9 potential areas of pollutant contact, or a description of best management practices to be  
10 implemented at the Facility to reduce pollutant discharges. According to information  
11 available to CSPA, Defendant's SWPPP has not been evaluated to ensure effectiveness and  
12 revised where necessary to further reduce pollutant discharges. Plaintiff is informed and  
13 believes, and thereupon alleges, that the SWPPP does not include each of the mandatory  
14 elements required by Section A of the General Permit. Plaintiff is informed and believes,  
15 and thereupon alleges, that the SWPPP does not contain an accurate map that clearly  
16 delineates the boundaries of the Facility.

17 56. Information available to CSPA indicates that as a result of these practices,  
18 storm water containing excessive pollutants is being discharged during rain events from the  
19 Facility directly to the San Francisco Bay.

20 57. The San Francisco Bay has been identified by the Regional Board, State Board  
21 and federal EPA as impaired for several pollutants, including mercury and unknown toxicity.

22 58. Plaintiff is informed and believes, and thereupon alleges, that pollutants  
23 discharged by the Facility in its storm water are contributing to violations of water quality  
24 standards that apply to the San Francisco Bay and its tributaries. Plaintiff is informed and  
25 believes, and thereupon alleges, that Defendant is discharging total suspended solids,  
26 chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead, electrical  
27 conductance, and other un-monitored pollutants that are causing or contributing to  
28 exceedances of applicable water quality standards. Defendant is contributing to violations of

water quality standards including, but not limited to, the narrative water quality standard for toxicity and turbidity and the numeric water quality standard for electrical conductance.

59. Plaintiff is informed and believes that Defendant failed to submit to the Regional Board a true and complete annual report certifying compliance with the General Permit since at least February 2, 2004. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the General Permit, Defendant must submit an annual report, that is signed and certified by the appropriate corporate officer, outlining the Facility's storm water controls and certifying compliance with the General Permit. Plaintiff is informed and believes, and thereupon alleges, that Defendant has signed incomplete annual reports that purported to comply with the General Permit when there was significant noncompliance at the Facility.

60. Information available to Plaintiff indicates that Defendant has not fulfilled the requirements set forth in the General Permit for discharges from the Facility due to the continued discharge of polluted storm water. Plaintiff is informed and believes, and thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

#### **Failure to Develop and Implement the Best Available and Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

61. Plaintiff realleges and incorporate Paragraphs 1-60, as if fully set forth herein.

62. The General Permit's SWPPP requirements and Effluent Limitation B(3) require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Defendant has failed to implement BAT and BCT at the Facility for its discharges of suspended solids, chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead, electrical conductance and other un-monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

63. Each day since October 1, 1992 that Defendant has failed to develop and



1 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
2 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3 64. Defendant has been in violation of the BAT/BCT requirements every day since  
4 October 1, 1992. Defendant continues to be in violation of the BAT/BCT requirements each  
5 day that it fails to develop and fully implement BAT and BCT at the Facility.

6 **SECOND CAUSE OF ACTION**  
7 **Failure to Prepare, Implement, Review, and Update**  
8 **an Adequate Storm Water Pollution Prevention Plan**  
9 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10 65. Plaintiff realleges and incorporate Paragraphs 1-64, as if fully set forth herein.

11 66. Section A and Provision E of the General Permit requires dischargers of storm  
12 water associated with industrial activity to have developed and be implementing an adequate  
13 SWPPP no later than October 1, 1992.

14 67. Defendant has failed to develop and implement an adequate SWPPP for the  
15 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the  
16 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials, without  
17 appropriate best management practices; the continued exposure of significant quantities of  
18 various materials to storm water flows; the continued exposure and tracking of waste resulting  
19 from the operation or maintenance of vehicles at the site; the failure to either treat storm water  
20 prior to discharge or to implement effective containment practices; and the continued  
21 discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark  
22 values.

23 68. Defendant has failed to update the Facility's SWPPP in response to the  
24 analytical results of the Facility's storm water monitoring.

25 69. Each day since October 1, 1992 that Defendant has failed to develop, implement  
26 and update an adequate SWPPP for the Facility is a separate and distinct violation of Section  
27 301(a) of the Act, 33 U.S.C. § 1311(a).

28 70. Defendant has been in violation of the SWPPP requirements every day since  
October 1, 1992. Defendant continues to be in violation of the SWPPP requirements each day

1 that it fails to develop and fully implement an adequate SWPPP for the Facility.

2 **THIRD CAUSE OF ACTION**

3 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**  
 4 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

5 71. Plaintiff re-alleges and incorporates Paragraphs 1-70, inclusive, as if fully set  
 6 forth herein.

7 72. Section B of the General Permit requires dischargers of storm water associated  
 8 with industrial activity to have developed and be implementing a monitoring and reporting  
 9 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,  
 10 1992.

11 73. Defendant has failed to develop and implement an adequate monitoring and  
 12 reporting program for the Facility. Defendant's ongoing failure to develop and implement  
 13 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to  
 14 monitor and sample storm water discharges during the 2004-2005 and 2006-2007 rainy  
 15 seasons.

16 74. Each day since October 1, 1992 that Defendant has failed to develop and  
 17 implement an adequate monitoring and reporting program for the Facility in violation of the  
 18 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
 19 1311(a). The absence of requisite monitoring and analytical results are ongoing and  
 20 continuous violations of the Act.

21 **FOURTH CAUSE OF ACTION**

22 **Discharges of Contaminated Storm Water**  
 23 **in Violation of Permit Conditions and the Act**  
 24 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

25 75. Plaintiff re-alleges and incorporates Paragraphs 1-74, inclusive, as if fully set  
 26 forth herein.

27 76. Discharge Prohibition A(2) of the General Permit requires that storm water  
 28 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
 General Permit require that storm water discharges and authorized non-storm water discharges

1 shall not adversely impact human health or the environment, and shall not cause or contribute  
2 to a violation of any water quality standards contained in a Statewide Water Quality Control  
3 Plan or the applicable Regional Board's Basin Plan.

4 77. Plaintiff is informed and believes, and thereupon alleges, that since at least May  
5 23, 2003, Defendant has been discharging polluted storm water from the Facility directly to  
6 the San Francisco Bay, in violation of the Discharge Prohibition A(2) of the General Permit.

7 78. During every rain event, rainwater flows freely over exposed materials, waste  
8 products, and other accumulated pollutants at the Facility, becoming contaminated with these  
9 pollutants. The rainwater then flows untreated from the Facility into channels or storm drains.  
10 This contaminated storm water flows into the San Francisco Bay.

11 79. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
12 contaminated storm water are causing pollution and contamination of the waters of the United  
13 States in violation of Discharge Prohibition A(2) of the General Permit.

14 80. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
15 of contaminated storm water are adversely affecting human health and the environment in  
16 violation of Receiving Water Limitation C(1) of the General Permit.

17 81. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
18 contaminated storm water are contributing to the violation of the applicable water quality  
19 standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's  
20 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

21 82. Every day since at least May 23, 2003, that Defendant has discharged and  
22 continues to discharge polluted storm water from the Facility in violation of the General Permit  
23 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
24 violations are ongoing and continuous.

#### 25 **FIFTH CAUSE OF ACTION**

#### 26 **False Certification of Compliance In Annual Report (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

27 83. Plaintiff realleges and incorporate Paragraphs 1-82, as if fully set forth herein.

28 84. Defendant has falsely certified compliance with the General Permit in each of

1 the annual reports submitted to the Regional Board since at least June 2004.

2 85. Each day since at least June 29, 2004 that Defendant has falsely certified  
3 compliance with the General Permit is a separate and distinct violation of the General Permit  
4 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of  
5 the General Permit's certification requirement each day that it maintains its false certification  
6 of its compliance with the General Permit.

7 **VII. RELIEF REQUESTED**

8 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

9 a. Declare Defendant to have violated and to be in violation of the Act as  
10 alleged herein;

11 b. Enjoin Defendant from discharging polluted storm water from the Facility  
12 unless authorized by the Permit;

13 c. Enjoin Defendant from further violating the substantive and procedural  
14 requirements of the Permit;

15 d. Order Defendant to immediately implement storm water pollution control  
16 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
17 pollutants in the Facility's storm water from contributing to violations of any water quality  
18 standards;

19 e. Order Defendant to comply with the Permit's monitoring and reporting  
20 requirements, including ordering supplemental monitoring to compensate for past monitoring  
21 violations;

22 f. Order Defendant to prepare a SWPPP consistent with the Permit's  
23 requirements and implement procedures to regularly review and update the SWPPP;

24 g. Order Defendant to provide Plaintiff with reports documenting the quality  
25 and quantity of their discharges to waters of the United States and their efforts to comply with  
26 the Act and the Court's orders;

27 h. Order Defendant to pay civil penalties of \$27,500 per day per violation for  
28 all violations occurring before March 15, 2004, and \$32,500 per day per violation for all

1 violations occurring after August 28, 2002, for each violation of the Act pursuant to Sections  
2 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

3 i. Order Defendant to take appropriate actions to restore the quality of waters  
4 impaired or adversely affected by their activities;

5 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
6 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

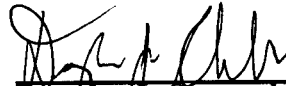
7 k. Award any such other and further relief as this Court may deem appropriate.

8  
9 Dated: July 21, 2008

Respectfully submitted,

10 LOZEAU DRURY LLP

11 By:



12 Douglas U. Chermak

13 Attorney for Plaintiff

14 CALIFORNIA SPORTFISHING PROTECTION  
15 ALLIANCE  
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# EXHIBIT A

**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

April 16, 2008

Jack Isola, Manager  
Davis Street Station for Material Recycling and Transfer  
Waste Management of Alameda County, Inc.  
2615 Davis Street  
San Leandro, CA 94577

Stuart Clark, President  
Waste Management of Alameda County, Inc.  
172 98<sup>th</sup> Ave  
Oakland, CA 94603

Waste Management of California, Inc.  
1001 Fannin, Suite 4000  
Houston, TX 77002

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Dear Mr. Isola and Mr. Clark:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at the Davis Street Station for Material Recycling and Transfer ("Facility") located at 2615 Davis Street in San Leandro, California. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Davis Street Station").

This letter addresses Davis Street Station's unlawful discharge of pollutants from the Facility into San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WQID identification number for the Facility listed on documents submitted to the Regional Board is 201I002422. The Facility is engaged in ongoing violations of the substantive and



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procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Davis Street Station is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Waste Management of Alameda County, Inc., Waste Management of California, Inc., Jack Isola, and Stuart Clark under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

## **I. Background.**

On November 4, 1997, Davis Street Station filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Davis Street Station certifies that the Facility is classified under SIC code 5093 (“processing of scrap material”) and under SIC code 4212 (“local trucking without storage”). The Facility collects and discharges storm water from its 53-acre industrial site through at least five outfalls that discharge into the San Francisco Bay. The Regional Board has identified waters of San Francisco Bay as failing to meet applicable water quality standards for PCBs, selenium, exotic species, dioxins, pesticides, and mercury. *See* [http://www.waterboards.ca.gov/tmdl/docs/303dlists2006/final/r2\\_final303dlist.pdf](http://www.waterboards.ca.gov/tmdl/docs/303dlists2006/final/r2_final303dlist.pdf).

The Regional Board has identified beneficial uses of the Bay region’s waters and established water quality standards for the San Francisco Bay in the “Water Quality Control Plan for the San Francisco Bay Basin,” generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/basin\\_plan/docs/basin\\_plan07.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf). The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features.” *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or

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muddy water from industrial areas, impairs people's use of the Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses." *Id.* at 3.3.7. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and lead of 0.0081 mg/L (4 day average) and 0.21 mg/L (1hour average). *Id.* at Table 3-3. EPA has adopted numeric water quality standards for copper of .0031 mg/L (4-day average) and .0048 mg/L (1-hour average), for lead of .210 mg/L (4-day average) and .0081 mg/L (1-hour average), and for zinc of .090 mg/L (4-day average) and .081 mg/L (1-hour average). 65 Fed.Reg. 31712 (May 18, 2000).

The U.S. Environmental Protection Agency ("EPA") has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by Davis Street Station: pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, chemical oxygen demand ("COD") – 120 mg/L, aluminum – .75 mg/L, zinc – 0.117 mg/L, iron – 1 mg/L, copper – .0636 mg/L, lead – .0816 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

## **II. Alleged Violations of the NPDES Permit.**

### ***A. Discharges in Violation of the Permit.***

Davis Street Station has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand

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("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Davis Street Station has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, oil & grease, chemical oxygen demand, aluminum, copper, iron, lead, zinc and other pollutants in violation of the General Permit. Davis Street Station's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
5/19/2006	Total Suspended Solids	150 mg/L	100 mg/L	Northwest Outfall
5/19/2006	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	Northwest Outfall
5/19/2006	Chemical Oxygen Demand	630 mg/L	120 mg/L	Northwest Outfall
5/19/2006	Aluminum	4.5 mg/L	0.75 mg/L	Northwest Outfall
5/19/2006	Copper	0.07 mg/L	0.0636 mg/L	Northwest Outfall
5/19/2006	Iron	6.9 mg/L	1.0 mg/L	Northwest Outfall
5/19/2006	Zinc	0.44 mg/L	0.117 mg/L	Northwest Outfall

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5/19/2006	Total Suspended Solids	670 mg/L	100 mg/L	Facility Entrance
5/19/2006	Specific Conductivity	1,200 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Facility Entrance
5/19/2006	Chemical Oxygen Demand	210 mg/L	120 mg/L	Facility Entrance
5/19/2006	Aluminum	11 mg/L	0.75 mg/L	Facility Entrance
5/19/2006	Copper	0.11 mg/L	0.0636 mg/L	Facility Entrance
5/19/2006	Iron	15 mg/L	1.0 mg/L	Facility Entrance
5/19/2006	Lead	0.18 mg/L	0.0816 mg/L	Facility Entrance
5/19/2006	Zinc	0.71 mg/L	0.117 mg/L	Facility Entrance
5/19/2006	Total Suspended Solids	1,800 mg/L	100 mg/L	Northeast Outfall
5/19/2006	Specific Conductivity	1,500 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Northeast Outfall
5/19/2006	Chemical Oxygen Demand	310 mg/L	120 mg/L	Northeast Outfall
5/19/2006	Aluminum	220 mg/L	0.75 mg/L	Northeast Outfall
5/19/2006	Copper	1.8 mg/L	0.0636 mg/L	Northeast Outfall
5/19/2006	Iron	310 mg/L	1.0 mg/L	Northeast Outfall
5/19/2006	Lead	3.4 mg/L	0.0816 mg/L	Northeast Outfall
5/19/2006	Zinc	11 mg/L	0.117 mg/L	Northeast Outfall
5/19/2006	Total Suspended Solids	1,500 mg/L	100 mg/L	Southeast Outfall
5/19/2006	Specific Conductivity	1,400 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Southeast Outfall
5/19/2006	Chemical Oxygen Demand	210 mg/L	120 mg/L	Southeast Outfall
5/19/2006	Aluminum	26 mg/L	0.75 mg/L	Southeast Outfall
5/19/2006	Copper	0.1 mg/L	0.0636 mg/L	Southeast Outfall
5/19/2006	Iron	37 mg/L	1.0 mg/L	Southeast Outfall
5/19/2006	Lead	0.18 mg/L	0.0816 mg/L	Southeast Outfall
5/19/2006	Zinc	0.58 mg/L	0.117 mg/L	Southeast Outfall
11/4/2005	Total Suspended Solids	500 mg/L	100 mg/L	Facility Entrance
11/4/2005	Specific Conductivity	990 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Facility Entrance
11/4/2005	Oil & Grease	52 mg/L	15 mg/L	Facility Entrance
11/4/2005	Chemical Oxygen Demand	280 mg/L	120 mg/L	Facility Entrance
11/4/2005	Aluminum	26 mg/L	0.75 mg/L	Facility Entrance

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11/4/2005	Copper	0.17 mg/L	0.0636 mg/L	Facility Entrance
11/4/2005	Iron	39 mg/L	1.0 mg/L	Facility Entrance
11/4/2005	Lead	0.32 mg/L	0.0816 mg/L	Facility Entrance
11/4/2005	Zinc	1.3 mg/L	0.117 mg/L	Facility Entrance
11/4/2005	Total Suspended Solids	200 mg/L	100 mg/L	Recycling Center
11/4/2005	Specific Conductivity	1,200 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Recycling Center
11/4/2005	Oil & Grease	43 mg/L	15 mg/L	Recycling Center
11/4/2005	Chemical Oxygen Demand	1,100 mg/L	120 mg/L	Recycling Center
11/4/2005	Aluminum	4.4 mg/L	0.75 mg/L	Recycling Center
11/4/2005	Copper	0.077 mg/L	0.0636 mg/L	Recycling Center
11/4/2005	Iron	6.9 mg/L	1.0 mg/L	Recycling Center
11/4/2005	Lead	0.086 mg/L	0.0816 mg/L	Recycling Center
11/4/2005	Zinc	0.67 mg/L	0.117 mg/L	Recycling Center
11/4/2005	Total Suspended Solids	840 mg/L	100 mg/L	Northeast Outfall
11/4/2005	Specific Conductivity	2,700 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Northeast Outfall
11/4/2005	Oil & Grease	78 mg/L	15 mg/L	Northeast Outfall
11/4/2005	Chemical Oxygen Demand	1,000 mg/L	120 mg/L	Northeast Outfall
11/4/2005	Aluminum	20 mg/L	0.75 mg/L	Northeast Outfall
11/4/2005	Copper	0.26 mg/L	0.0636 mg/L	Northeast Outfall
11/4/2005	Iron	29 mg/L	1.0 mg/L	Northeast Outfall
11/4/2005	Lead	0.36 mg/L	0.0816 mg/L	Northeast Outfall
11/4/2005	Zinc	1.5 mg/L	0.117 mg/L	Northeast Outfall
11/4/2005	pH	1.3 pH units	6.0 – 9.0 pH units	Southeast Outfall
11/4/2005	Total Suspended Solids	520 mg/L	100 mg/L	Southeast Outfall
11/4/2005	Specific Conductivity	22,000 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	Southeast Outfall
11/4/2005	Oil & Grease	40 mg/L	15 mg/L	Southeast Outfall
11/4/2005	Chemical Oxygen Demand	220 mg/L	120 mg/L	Southeast Outfall
11/4/2005	Aluminum	41 mg/L	0.75 mg/L	Southeast Outfall
11/4/2005	Copper	0.26 mg/L	0.0636 mg/L	Southeast Outfall
11/4/2005	Iron	58 mg/L	1.0 mg/L	Southeast Outfall
11/4/2005	Lead	0.72 mg/L	0.0816 mg/L	Southeast Outfall
11/4/2005	Zinc	2.3 mg/L	0.117 mg/L	Southeast Outfall

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3/25/2004	Total Suspended Solids	570 mg/L	100 mg/L	North Central Out Fall
3/25/2004	Specific Conductivity	1,200 $\mu$ mho/cm	200 $\mu$ mho/cm (proposed)	North Central Out Fall
3/25/2004	Chemical Oxygen Demand	630 mg/L	120 mg/L	North Central Out Fall
3/25/2004	Aluminum	12 mg/L	0.75 mg/L	North Central Out Fall
3/25/2004	Copper	0.14 mg/L	0.0636 mg/L	North Central Out Fall
3/25/2004	Iron	22 mg/L	1.0 mg/L	North Central Out Fall
3/25/2004	Lead	0.14 mg/L	0.0816 mg/L	North Central Out Fall
3/25/2004	Zinc	1.1 mg/L	0.117 mg/L	North Central Out Fall
3/25/2004	Total Suspended Solids	200 mg/L	100 mg/L	North East Out Fall
3/25/2004	Chemical Oxygen Demand	150 mg/L	120 mg/L	North East Out Fall
3/25/2004	Aluminum	6.8 mg/L	0.75 mg/L	North East Out Fall
3/25/2004	Copper	0.066 mg/L	0.0636 mg/L	Out Fall
3/25/2004	Iron	11 mg/L	1.0 mg/L	North East Out Fall
3/25/2004	Zinc	0.53 mg/L	0.117 mg/L	North East Out Fall
2/2/2004	Total Suspended Solids	1,900 mg/L	100 mg/L	North Central Out Fall
2/2/2004	Oil & Grease	26 mg/L	15 mg/L	North Central Out Fall
2/2/2004	Chemical Oxygen Demand	140 mg/L	120 mg/L	North Central Out Fall
2/2/2004	Aluminum	13 mg/L	0.75 mg/L	North Central Out Fall
2/2/2004	Copper	0.11 mg/L	0.0636 mg/L	North Central Out Fall
2/2/2004	Iron	25 mg/L	1.0 mg/L	North Central Out Fall
2/2/2004	Lead	0.16 mg/L	0.0816 mg/L	North Central Out Fall
2/2/2004	Zinc	0.71 mg/L	0.117 mg/L	North Central Out Fall



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2/2/2004	Total Suspended Solids	680 mg/L	100 mg/L	North East Out Fall
2/2/2004	Specific Conductivity	340 µmho/cm	200 µmho/cm (proposed)	North East Out Fall
2/2/2004	Aluminum	24 mg/L	0.75 mg/L	North East Out Fall
2/2/2004	Copper	0.16 mg/L	0.0636 mg/L	North East Out Fall
2/2/2004	Iron	40 mg/L	1.0 mg/L	North East Out Fall
2/2/2004	Lead	0.17 mg/L	0.0816 mg/L	North East Out Fall
2/2/2004	Zinc	0.95 mg/L	0.117 mg/L	North East Out Fall

CSPA's investigation, including its review of Davis Street Station's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Davis Street Station has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, O&G, COD, aluminum, copper, iron, lead, zinc and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Davis Street Station was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Davis Street Station is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since April 16, 2003, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Davis Street Station has discharged storm water containing impermissible levels of TSS, specific conductivity, O&G, COD, aluminum, copper, iron, lead, zinc in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Street Station is subject to penalties for violations of the General Permit and the Act since April 16, 2003.



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***B. Failure to Identify and Control Non-Storm Water Discharges***

The General Permit requires that facility operators “investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system. All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.” Section A(6)(a)(v).

The General Permit authorizes certain non-storm water discharges providing that the non-storm water discharges are in compliance with Regional Board requirements; that the non-storm water discharges are in compliance with local agency ordinances and/or requirements; that BMPs are included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges; that the non-storm water discharges do not contain significant quantities of pollutants; and that the monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective (Special Conditions D). Section B(3) of the General Permit requires dischargers to conduct visual observations of all drainage areas for the presence of non-storm water discharges, to observe the non-storm water discharges, and maintain records of such observations.

CSPA, on information and belief, alleges that the Facility discharges unauthorized non-storm water at the Facility, including dust suppression water and wash water. On information and belief, CSPA further alleges that the Facility has failed to identify and control non-storm water discharges in violation of Sections A(6)(a)(v) and B(3) and D of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Street Station is subject to penalties for violations of the General Permit and the Act since April 16, 2003.

***C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.***

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices

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("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Davis Street Station's Annual Reports indicate that Davis Street Station has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Davis Street Station has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Davis Street Station has been in continuous violation of Section A and Provision E(2) of the General Permit every day since April 16, 2003 at the very latest, and will continue to be in violation every day that Davis Street Station fails to prepare, implement, review, and update an effective SWPPP. Davis Street Station is subject to penalties for violations of the Order and the Act occurring since April 16, 2003.

***D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

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The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. In addition, the Facility failed to sample or monitor any storm water discharge locations during the 2006-2007 and 2004-2005 rainy seasons based on a general claim that no qualifying events occurred at the Facility. To the extent the storm water data collected by Davis Transfer Station is not representative of the quality of the Facility's various storm water discharges or the Facility failed to monitor all qualifying storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Street Station is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since April 16, 2003.

***E. Failure to File True and Correct Annual Reports.***

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, Davis Street Station and its agent, Jack Isola, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Davis Street Station has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Davis Street Station failed to submit a complete or correct report and every time Davis Street Station or its agents falsely purported to comply with the Act. Davis Street Station is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 16, 2003.

**IV. Persons Responsible for the Violations.**

CSPA puts Waste Management of Alameda County, Inc., Waste Management of California, Inc., Jack Isola, and Stuart Clark on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Waste Management of Alameda County, Inc., Waste Management of California, Inc., Jack Isola, and Stuart Clark on notice that it intends to include those persons in this action.

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**V. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director;  
California Sportfishing Protection Alliance,  
3536 Rainier Avenue,  
Stockton, CA 95204  
Tel. (209) 464-5067

**VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau  
Douglas J. Chermak  
Law Office of Michael R. Lozeau  
1516 Oak Street, Suite 216  
Alameda, California 94501  
Tel. (510) 749-9102  
mrlozeau@lozeaulaw.com

Andrew L. Packard  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
Tel. (707) 763-7227  
andrew@packardlawoffices.com

**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Davis Street Station to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Davis Street Station and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days

so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" and last name "Jennings" clearly distinguishable.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

cc: CT Corporation, Agent of Service of Process for Waste Management of Alameda County, Inc. (C0091817) and Waste Management of California, Inc. (C0266196)

**SERVICE LIST**

Steve Johnson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Michael Mukasey, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Wayne Nastri, Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**ATTACHMENT A****Rain Dates, Davis Street Station, San Leandro, California**

April	16	2003	January	02	2004	November	09	2004
April	21	2003	January	06	2004	November	10	2004
April	22	2003	January	08	2004	November	11	2004
April	24	2003	January	08	2004	November	13	2004
April	25	2003	January	09	2004	November	27	2004
April	27	2003	January	14	2004	December	06	2004
April	28	2003	January	23	2004	December	07	2004
April	29	2003	January	24	2004	December	08	2004
May	02	2003	January	26	2004	December	10	2004
May	03	2003	January	27	2004	December	26	2004
May	06	2003	January	30	2004	December	27	2004
May	07	2003	February	01	2004	December	28	2004
May	08	2003	February	02	2004	December	29	2004
May	30	2003	February	03	2004	December	30	2004
July	24	2003	February	06	2004	December	31	2004
September	03	2003	February	13	2004	January	01	2005
November	02	2003	February	15	2004	January	02	2005
November	03	2003	February	16	2004	January	03	2005
November	06	2003	February	17	2004	January	04	2005
November	07	2003	February	18	2004	January	05	2005
November	08	2003	February	20	2004	January	06	2005
November	09	2003	February	21	2004	January	07	2005
November	14	2003	February	22	2004	January	08	2005
November	15	2003	February	24	2004	January	09	2005
November	17	2003	February	25	2004	January	10	2005
November	30	2003	February	26	2004	January	11	2005
December	01	2003	February	27	2004	January	12	2005
December	02	2003	March	01	2004	January	13	2005
December	04	2003	March	25	2004	January	16	2005
December	05	2003	March	27	2004	January	17	2005
December	06	2003	April	18	2004	January	18	2005
December	07	2003	April	19	2004	January	19	2005
December	09	2003	April	20	2004	January	20	2005
December	10	2003	April	21	2004	January	21	2005
December	12	2003	May	28	2004	January	22	2005
December	13	2003	August	23	2004	January	23	2005
December	14	2003	August	24	2004	January	24	2005
December	19	2003	September	19	2004	January	25	2005
December	20	2003	October	17	2004	January	26	2005
December	21	2003	October	19	2004	January	27	2005
December	23	2003	October	20	2004	January	28	2005
December	24	2003	October	23	2004	February	07	2005
December	25	2003	October	25	2004	February	11	2005
December	28	2003	October	26	2004	February	14	2005
December	29	2003	November	03	2004	February	15	2005
January	01	2004	November	04	2004	February	16	2005



**ATTACHMENT A****Rain Dates, Davis Street Station, San Leandro, California**

February	17	2005	November	04	2005	March	21	2006
February	18	2005	November	07	2005	March	11	2006
February	19	2005	November	08	2005	March	13	2006
February	20	2005	November	09	2005	March	30	2006
February	21	2005	November	25	2005	March	04	2006
February	26	2005	November	28	2005	March	10	2006
February	27	2005	November	29	2005	March	28	2006
February	28	2005	December	01	2005	March	07	2006
March	01	2005	December	02	2005	March	01	2006
March	02	2005	December	07	2005	March	02	2006
March	03	2005	December	17	2005	March	09	2006
March	04	2005	December	18	2005	March	27	2006
March	09	2005	December	19	2005	March	12	2006
March	18	2005	December	20	2005	March	03	2006
March	19	2005	December	21	2005	March	16	2006
March	20	2005	December	22	2005	March	31	2006
March	21	2005	December	25	2005	March	06	2006
March	22	2005	December	26	2005	March	24	2006
March	23	2005	December	27	2005	March	14	2006
March	27	2005	December	28	2005	March	20	2006
March	28	2005	December	29	2005	March	25	2006
March	29	2005	December	30	2005	March	05	2006
April	03	2005	December	31	2005	April	01	2006
April	04	2005	January	06	2006	April	17	2006
April	07	2005	January	08	2006	April	15	2006
April	08	2005	January	13	2006	April	08	2006
April	22	2005	January	21	2006	April	10	2006
April	23	2005	January	03	2006	April	09	2006
April	27	2005	January	18	2006	April	05	2006
April	28	2005	January	11	2006	April	03	2006
April	29	2005	January	27	2006	April	07	2006
May	04	2005	January	07	2006	April	04	2006
May	05	2005	January	01	2006	April	12	2006
May	08	2005	January	17	2006	April	02	2006
May	09	2005	January	30	2006	April	11	2006
May	18	2005	January	28	2006	April	16	2006
May	19	2005	January	02	2006	May	24	2006
June	8	2005	January	14	2006	May	19	2006
June	09	2005	February	17	2006	May	21	2006
June	16	2005	February	04	2006	June	28	2006
June	17	2005	February	02	2006	July	20	2006
June	18	2005	February	26	2006	July	06	2006
October	14	2005	February	01	2006	July	21	2006
October	15	2005	February	27	2006	August	02	2006
October	26	2005	February	28	2006	October	05	2006
October	29	2005	March	29	2006	October	06	2006
November	03	2005	March	17	2006	October	17	2006

**ATTACHMENT A****Rain Dates, Davis Street Station, San Leandro, California**

November 02	2006	April 14	2007	December 06	2007
November 03	2006	April 19	2007	December 07	2007
November 04	2006	April 20	2007	December 17	2007
November 09	2006	April 21	2007	December 18	2007
November 11	2006	April 22	2007	December 19	2007
November 12	2006	April 27	2007	December 20	2007
November 13	2006	May 02	2007	December 27	2007
November 14	2006	May 03	2007	December 28	2007
November 15	2006	May 04	2007	December 29	2007
November 23	2006	May 10	2007	January 03	2008
November 27	2006	May 11	2007	January 04	2008
November 28	2006	May 14	2007	January 05	2008
December 09	2006	May 15	2007	January 06	2008
December 10	2006	May 16	2007	January 07	2008
December 11	2006	May 17	2007	January 08	2008
December 12	2006	May 20	2007	January 09	2008
December 13	2006	May 21	2007	January 10	2008
December 14	2006	May 23	2007	January 21	2008
December 15	2006	May 24	2007	January 22	2008
December 16	2006	May 27	2007	January 23	2008
December 22	2006	May 29	2007	January 24	2008
December 27	2006	May 30	2007	January 25	2008
January 04	2007	May 31	2007	January 26	2008
January 05	2007	June 01	2007	January 27	2008
January 17	2007	June 03	2007	January 28	2008
January 26	2007	June 04	2007	January 29	2008
January 27	2007	June 06	2007	January 30	2008
January 28	2007	June 08	2007	January 31	2008
February 07	2007	June 10	2007	February 02	2008
February 08	2007	June 13	2007	February 03	2008
February 09	2007	June 14	2007	February 19	2008
February 10	2007	June 15	2007	February 20	2008
February 11	2007	June 19	2007	February 21	2008
February 12	2007	June 21	2007	February 22	2008
February 21	2007	June 22	2007	February 23	2008
February 22	2007	September 22	2007	February 24	2008
February 23	2007	October 09	2007	March 13	2008
February 24	2007	October 10	2007	March 14	2008
February 25	2007	October 12	2007	March 15	2008
February 26	2007	October 15	2007	March 28	2008
February 27	2007	October 16	2007	March 29	2008
February 28	2007	October 17	2007		
March 20	2007	October 19	2007		
March 26	2007	November 05	2007		
April 07	2007	November 10	2007		
April 09	2007	November 11	2007		
April 11	2007	December 04	2007		